

L I C H T E N & L I S S - R I O R D A N , P . C .

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October 11, 2023

VIA ONLINE FILING

California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: Notice Pursuant to California Labor Code § 2699.3(a)(1)

Dear PAGA Administrator:

My firm represents Crystal Shugars in connection with her claims pursuant to the California Labor Code against Walmart (“Walmart” or “Respondent”). Ms. Shugars has worked for Respondent as a driver in California, fulfilling and delivering orders to Respondent’s customers. Ms. Shugars has been working for Respondent since approximately October of 2022. Because Respondent illegally misclassified Ms. Shugars and other drivers using its Spark Driver app as independent contractors rather than employees, Respondent has violated numerous provisions of the California Labor Code, as set forth further below.

Pursuant to Cal. Lab. Code §2699.3(a)(1), please consider this letter notice of the specific provisions of the California Labor Code violated by Respondent that may result in penalties under the Private Attorney General Act of 2004, including the facts and theories to support the alleged violations. Notice is also being sent via mail and email to Respondent’s General Counsel.

Walmart is an international retailer with thousands of stores in the U.S. and abroad. Walmart also owns and operates an app called Spark Driver. According to Walmart’s website, the Spark Driver app allows anyone with a car and a smartphone to “shop or deliver for customers of Walmart and other businesses.” Spark Drivers must abide by a litany of policies and rules designed to control their work performance. Among other requirements, Spark Drivers must own a smartphone, maintain active car insurance, have a valid driver’s license, have a clean driving record, undergo mandatory training on how to use the app and deliver alcohol, and pass a background check. As is clear from its name, there could be no Spark Driver app without its drivers.

L I C H T E N & L I S S - R I O R D A N , P . C .

Walmart requires Spark Drivers to sign contracts in order to obtain work, and it classifies these workers as independent contractors despite the fact that Spark Drivers should be classified as employees for the following reasons:

- Spark Drivers provide a service (i.e. picking up and delivering items) that benefits Walmart and forms an integral part of its business and its usual course of business;
- Walmart retains the right to terminate Spark Drivers if it believes the individual has failed to meet its standards;
- Spark Drivers like Ms. Shugars do not engage in a business distinct and independent from Respondent's business and instead perform delivery jobs as required by Walmart;
- Walmart controls drivers' schedules and pay;
- Spark Drivers like Ms. Shugars do not possess any specialized skills or prior experience.

Because Respondent's Spark Drivers are, in fact, employees, they are protected by the provisions of the California Labor Code. Accordingly, we wish to notify you of the following violations of the California Labor Code:

Violations of the California Labor Code

1. Respondent has violated Cal. Lab. Code § 2802 by failing to reimburse its drivers for all reasonably necessary expenditures incurred in the discharge of their duties of, including but not limited to the cost of fuel, the cost of the required cell phone plan, the cost of required training, the cost of vehicle maintenance, and other transportation costs.
2. Respondent has violated Cal. Lab. Code §§ 1194, 1198, 510, and 554 by failing to pay the appropriate overtime premium for all overtime hours worked.
3. Respondent has violated Cal. Lab. Code § 226(a) by failing to provide its drivers with proper itemized wage statements that include hours worked and hourly wages and by failing to provide wage statements that are accessible.
4. Respondent has violated Cal. Labor Code § 1174(d), which requires that every employer in California maintain "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed" in California. Respondent has failed to maintain accurate records in compliance with Cal. Lab. Code § 1174 and is subject to civil penalties pursuant to PAGA in addition to the statutory penalties of \$500 pursuant to Cal. Lab. Code § 1174.5.
5. Respondent has violated Cal. Lab. Code § 226.8(a)(1) by willfully misclassifying drivers as independent contractors, and under violation of Cal. Lab. Code § 226.8(a)(c) the Respondent is subject to civil penalties of no less than "ten thousand dollars (\$10,000)"

L I C H T E N & L I S S - R I O R D A N , P. C.

and no more than “twenty-five thousand dollars (\$25,000) for each violation”, in addition to any other “penalties or fines permitted by law.”

6. Respondent has violated Cal. Lab. Code §§ 1197 and 1194 by failing to ensure that its drivers receive the applicable state minimum wage for all hours worked.
7. Respondent has violated Cal. Lab. Code §§ 226.7 and 512 by failing to afford its drivers meal and rest breaks.
8. Respondent has violated Cal. Lab. Code § 432.5 by requiring its drivers to sign illegal contracts.

Accordingly, Ms. Shugars seeks all applicable civil penalties related to the foregoing violations.

Yours Truly,

Shannon Liss-Riordan

cc: Walmart, c/o Kerry Kotouc, General Counsel, via email delivery to kerry.kotouc@walmartlegal.com and via mail delivery to Kerry Kotouc / Attention of the Legal Department, Walmart Inc., 702 Southwest 8th Street, Bentonville, Arkansas 72716